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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,936	06/30/2003	Michael Eugene Bragg		1325
7590	09/08/2004		EXAMINER	
Michael E. Bragg 14323 E. Saratoga Place Aurora, CO 80015			GRILES, BETHANY L	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/607,936	BRAGG, MICHAEL EUGENE
	Examiner Bethany L. Griles	Art Unit 3643

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 30 June 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ .  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 8, and 10, recite the limitations "the filler material, the artificial plant stems, and the flypaper" repeatedly. There is insufficient antecedent basis for this limitation in the claim.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For example, claim 3 recites "comprises a \_\_\_\_\_ disposed in the container". This type of error occurs repeatedly in several of the claims, where it appears words have been omitted. Also, as another example, claim 8, lines 14-16 contain awkward and confusing language.

Regarding claim 9, this claim does not appear to further limit the apparatus claim of instant claim 8. Also, it is unclear as to whether the applicant intends to claim an apparatus or a method.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3643

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Hight US6266917.

Regarding claims 1, 4,5, 6,7,8, and 10 (as best understood), Hight discloses A fly trap for removing flies from places where people gather comprising: means for holding filler material (col 2, lines 10 and 11), plant stems 26, and flypaper (col 2, line 4); means for providing a medium (col 2, line 11)in which the plant stems can be held firmly in place, and upon which flypaper can be placed, means for holding plant stems, and flypaper; means for giving artificial the appearance of being an ordinary decorative artificial plant (refer to figure 1) the fly trap entirely inserted to said filler material(col 2, lines 1-5), firmly embedded to said means for providing a medium in which the plant stems can be held firmly in place, and upon which the fly paper can be placed; means for catching and holding flies (col 2, line 4) that touch said adhesive surface, removably positioned to said means for providing a medium in which the plant stems can be held firmly in place, and upon which the fly paper can be placed; means for catching and holding flies, permanently bonded to said means for catching and holding flies that touch said adhesive surface; and means for attracting flies to the flypaper with adhesive surface, permanently imbued to said means for catching and holding flies that touch said adhesive surface, and periodically imbued to said means for providing a medium in which the plant stems can be held firmly in place, and upon which the fly paper can be placed (col 2, lines 1-11).

Art Unit: 3643

Hight does not disclose that the plant stems are artificial.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use artificial plants in place of live ones, as it is old and notoriously well known in the art to use artificial plants in lieu of live plants when decorating and to decrease maintenance.

Regarding claim 2 (as best understood) Hight discloses that the structure comprises an open top container 4.

Regarding claim 3 (as best understood) Hight discloses the medium (in this case soil—col 2, line 11) on which the flypaper can be placed has a predetermined density.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Babb US5383301; Rusco et al. US5193302; Simpson US6145242; Miller US5657575; Silvandersson et al. US6438894; Holder US6155002; Reed US6655083; Spelt US6161329.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Bethany L. Griles*  
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Examiner  
Art Unit 3643

blg

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*9/2/04*